IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 376 OF 2005

Shreeji Metachem Pvt.Ltd. & Ors ...Applicants

V/s.

Bhupendra C. Doshi & Anr ...Respondents

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Mr. V.T. Tulpule, counsel i/b K.C. Mehta, the applicant.

Mr. Dharam Sharma, Adv.for Respondent No.1.

Mr. Y.S. Shinde, A.P.P. for the State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 31.08.2005

DATE OF PRONOUNCING THE ORDER : 23.09.2005

P.C.:-

1. Heard the learned counsel for the applicants i.e. original accused, the learned advocate for the respondent No.1 i.e. original complainant and the learned A.P.P. for the State.

2. The applicants are seeking quashing of Criminal complaint i.e. Case No. 284/S/1997 which is pending before the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai. The said case is under Section 138 of Negotiable Instruments Act and Section 420 of I.P.C. It may be stated here that against applicant No.3 process is only issued under Section

138 of Negotiable Instruments Act and process is not issued against applicant No.3 under Section 420 of I.P.C.

3. It is an admitted position that the applicant Nos. 2 and 3 are directors of accused No.1. The learned counsel for the applicants has submitted that as far as the applicant No.3 is concerned, she is a lady and wife of applicant No.2. It is submitted that the applicant No.3 had not issued cheques in question. Though the applicant No.3 was a director of the company she had no knowledge in respect of issue of cheques in question. It is further submitted that there is nothing stated in the complaint against her, hence process in respect of applicant No.3 deserves to be quashed.

4. I have perused the complaint and I find that it is specifically stated in the complaint that applicant No.3 had knowledge regarding issuance of the said cheques. In fact in para 11 of the said complaint, it is specifically stated as under:-

> " The accused No.3 also had knowledge of issue of said cheques and also of funds not being there in the bank account wherefrom cheques were issued. The accused No.3 being active participant to the company affairs she is personally aware of said cheques and bank

account position. The Accused Nos. 2 and 3 have thus committed the offences disclosed above."

. In view of the averments in para No.11 of the complaint, it cannot be said that there is nothing in the complaint in respect of applicant No.3 and that no case is made out against her.

5. As far as the applicant No.2 is concerned, it is specifically averred in the complaint that the applicant No.2 had signed the cheques in question and the applicant No.2 had knowledge that the said cheques will be returned unpaid for want of funds. Thus, on going through the averments in the complaint, I find that there is some material in respect of both the applicants i.e. applicant Nos. 2 and 3.

6. It was contended on behalf of all the applicants that they were not under any legally enforceable liability in respect of amount of the cheques. The Supreme Court in the case of **A.V. Murthy Vs. B.S. Nagabasavanna 2002 Cr.L.J. 1479** has held that the dismissal of complaint on the ground that cheque drawn in respect of debt or liability which was not legally enforceable is illegal and erroneous at the initial stage of enquiry. It is further observed that the said question is a mixed question of law and

fact and hence, trial is necessary.

7. In view of this decision and the averments in the complaint, I do not think that this is a fit case to quash the complaint, hence, the application is rejected.

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